(1)

C. S. 1d (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 3288 /2004

PETITIONERS

1. Santosh Kumar Yadav, S/o. Late Manbodh Yadav, aged about 52 years, occupation – Hotel Business, Kotra Road, Raigarh, Tahsil and Distt. Raigarh (C.G)

F.R. No. 3288/04
Presented by Shri R. Mahadwani
dated 15-9-04

2. Smt. Ramwati Widow of Late Manbodh Yadav, aged about years, occupation – domestic house wife, Kotra Road, Tah and Distt. Raigarh (Chhattisgarh)

RECEIVED COPY
15.9.04
Clerk to A. G. Bilaspur

VERSUS

RESPONDENTS

1. Rajendra Kumar Agrawal, aged about 35 years son of Shri Banarshi Das Agrawal, occupation – business, resident of – Kotra Road, Raigarh (C.G.)

S. R.

2 – The State of Chhattisgarh, through : the District Collector, Raigarh (CG)

WRIT PETITION UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA

(48)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P 3288/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

9.2.2005

On a mention being made, the case is taken up for hearing.

Shri A.N. Bhakta, counsel for the petitioners.

Shri A.P. Sharma, counsel for respondent No.1.

Smt. Fouzia Mirza, Panel Lawyer for the State/respondent No.2.

The petitioners have preferred this writ petition under Article 227 of the Constitution of India, questioning the legality, propriety and correctness of the order dated 23rd August, 2004, passed by the Civil Judge, Class-I, Raigarh in Civil Suit No.79-A/2004, whereby the learned Civil Judge has rejected the application filed by the petitioners herein under Order 26 Rule 9 of the Civil Procedure Code for appointing a local commission for preparing the inspection report of the site.

I have heard learned counsel for the parties and perused the impugned order. By the impugned order, the learned Civil Judge has rejected the application and observed that the case of the plaintiffs is that the defendant has encroached upon the plaintiffs' land admeasuring 0.12 hectare, but the defendant has denied the same fact. As the defendant has denied the fact, therefore, the plaintiffs can prove this fact by evidence and, at this stage, when the proceedings of the suit have commenced it is not justified to accept the application.

The petitioner herein filed a suit before the learned Civil Judge with an averment that the defendant has encroached upon the land of the petitioners mentioned in Schedule-B, shown in red ink and marked as अ. ब. स. द. and this fact has been denied by the defendant. In this connection, relevant provision is Order 26 Rule 9 of the Code of Civil Procedure, 1908, which is as under: -

No. #411354, 22354

(49)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.3288/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

"9. Commissions to make local investigations.---In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."

Learned counsel for the petitioners submitted that as the revenue record is available with the Revenue Department, therefore, the petitioners herein requested that local investigation be conducted by the competent revenue officer.

As mentioned above, the petitioners herein have specifically made a claim in para 3 of the plaint that respondent No.1 herein has encroached upon the petitioners' land shown in the red ink marked as अ, ब, स, द, and the same has been denied. As the revenue record regarding title of the parties and measurement of land belonging to the respective parties are already available with the Revenue Department, therefore, in such a situation, the revenue officers are the proper authorities to make local inspection and verify in presence of the parties about the title of land of the parties. In order to resolve the controversy, for just and proper decision of the case, and for elucidation of the matter in dispute, it was appropriate to appoint a revenue officer for local investigation and to make a report about the correctness of the assertion made by the parties. The ground on which

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.3288/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the trial Court has rejected the application appears to be not correct, because, before the commencement of evidence if such a report is obtained then it will facilitate the decision of the case.

in view of the above, I am of the opinion that the order passed by the learned trial Court is perverse and the same is not in accordance with the spirit of law i.e. Order 26 Rule 9 of the C.P.C. Therefore, the impugned order is set aside and the Civil Judge is directed to appoint a competent revenue officer for local investigation for preparing the report in presence of both the parties and to submit a report.

With the direction aforesaid, the petition stands disposed of.

Consequently, M.(W.)P.No.2877/2004 and I.A.No.6996/2004 also stand disposed of.

Certified copy as per Rules.

Sd/-
L.C. Bhadoo
Judge

Sorr

2/12/2005.

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